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CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

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SUBCOMMITTEE ON MIDDLE EAST AND
NORTH AFRICA

Elaine Kaplan, Acting Director
Office of Personnel Management
1900 E Street NW
Washington, DC 20415-1000

Dear Director Kaplan:

I am writing in response to the notice of proposed rulemaking that your agency offered on August 8, 2013. Your interpretation of Section 1312(d)(3)(D) of the Patient Protection and Affordable Care Act (ACA) and the implications for health-insurance benefits for Members of Congress and staff directly violate the plain language of the law. I urge you to withdraw the proposed rule.

There is no authority within the ACA that authorizes your agency to pay premium subsidies for Members of Congress and staff who will be enrolled in health-care exchanges under the law. Such subsidies for individuals obtaining insurance on those exchanges are administered through the tax code, in accordance with Section 1401(a) of the ACA.

Moreover, Section 36B(c)(2)(C)(iii) of the Internal Revenue Code (as amended by the ACA) stipulates that individuals are not eligible for taxpayer subsidies if they receive health care from their employer and, conversely, employers cannot provide health-care payments to their employees if they are required to receive coverage on the exchanges.

Plus which, Title 5 of the United States Code does not provide OPM the authority to pay for a subsidy for a plan not under Chapter 89. Because the plans offered on the exchanges are covered by 42 U.S.C. §18021—not Chapter 89 of Title 5—OPM thus lacks legal authority to make these payments. Thus, I respectfully request that OPM withdraw its notice of proposed rulemaking, leaving Members of Congress and their staff to follow the same law that governs all Americans.

Should you have any questions, you may contact Jonny Hiler in my office at 202-225-3772. I would also refer you to Office of the Chief Administrative Officer (CAO) of the U.S. House of Representatives at 202-226-6660. Thank you for your prompt attention to this matter of basic fairness and equality before the law.

Sincerely,

Tom Cotton
Member of Congress

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